

# Memorandum



Date: March 20, 2007

To: Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

Supplement to  
Agenda Item No. 5 (A)

From: George M. Burgess  
County Manager

Subject: Supplemental Report on Ordinance Approving Issuance of Tax Exempt Notes,  
Lending of the Proceeds to Performing Arts Center Foundation of Greater Miami and  
Approving Loan Agreement, County Guaranty and other Related Matters

The following report provides additional information regarding the obligation of the Performing Arts Center Trust (PACT) and the Performing Arts Center Foundation (Foundation).

## BACKGROUND

The PACT is a non-profit corporation formed in 1991 by the Board of County Commissioners (Board) to oversee the planning, design, construction and operation of the Performing Arts Center (PAC). The County and the PACT entered into an agreement known as the Operating Management Agreement (Operating Agreement) which covered the obligations between the two parties.

The Performing Arts Center Foundation (Foundation) is also a non-profit corporation formed by the PACT to, among other things, raise the private funds outlined in the Operating Management Agreement. The Foundation has entered into interlocking separate agreement with the PACT known as the Cooperation Agreement to raise private funds. The Board approved the Operating Agreement and the Cooperation Agreement on July 13, 1993 through Resolution No. R-860-93. The Cooperation Agreement mirrors the Operating Agreement in regards to all County obligations; however the County does not have a direct contract with the Foundation since the agreement is with the PACT.

In the past, the Board has approved amendments to the Operating Agreement and the Cooperation Agreement simultaneously. In other words, when an amendment to the Operating Agreement has been brought forth for Board approval, the same adjustment to the Cooperation Agreement is presented for approval. This is necessary because the Foundation raises the private sector funds and transmits them to the PACT, who in turn conveys the committed funds to the County.

On April 25, 2006, the Board adopted Resolution No. R-480-06 approving Amendment No. 5 to both the Operating Agreement between the County and PACT, and the Cooperation Agreement between the PACT and the Foundation. These amended agreements provided for an extension to August 4, 2006 for the PACT and the Foundation to deliver to the County the next installment of the private sector funding of \$20 million for the construction of the PAC. The original private sector contribution for the design and construction of the PAC was \$48.583 million. In order to meet the \$20 million obligation, the Foundation was able to obtain pledges for, among other things, naming rights to the Carnival Center from Carnival Cruise Lines. Although this and all other current pledges total approximately \$20 million, they are not lump sum payments. These pledges consist of annual payments to be paid over a period of years.

As of August 4, 2006, the County had not received the funds; however, an additional \$4 million was remitted to the County by the end of the month, leaving a balance of \$16 million. In order to convert future pledges into cash, the Foundation obtained a loan from private lending institutions secured by the payment stream of the remaining pledges. To minimize the interest rate the Foundation would have to pay, the lending institutions recommended structuring the loan as a tax exempt loan.

The County's issuance of the tax exempt note will enable the Foundation to obtain the loan at the most favorable rates, and satisfy its obligation to fund the construction portion of its commitment. The tax exempt note will be issued by the County on behalf of the Foundation, with no direct County obligation. However, in order to give the financial institutions additional security in the event pledges are not received on time, the County will guarantee the timely payment of debt service. Any payments made by the County pursuant to the guarantee will be reimbursed by the Foundation when the pledges are available. Additionally, the financial institutions have requested an interest reserve of \$400,000 to be funded by the Foundation that will be used, if needed; before the County is required to make a payment under the guarantee. This has been incorporated in the Ordinance being presented for Board action. The Foundation has committed to providing this interest reserve as a condition of this arrangement.

Attached to the Ordinance are the documents that will be executed to effectuate the loan, as well as a Promissory Note from the Foundation to the County. The objective of this Ordinance is to help provide the PACT and the Foundation with the most practical and cost effective way to meet the private sector obligations and remit to the County the balance of the private sector funds necessary to complete the construction.


Below is a recap of the PACT and the Foundation's construction obligations under the Operating Agreement and the Cooperation Agreement, respectively:

Private contribution for Design and Construction	\$ 48,583,000
Design Contribution (Received in 1996)	(3,330,000)
First Construction Contribution (Received in 2001)	(18,870,000)
Additional Donor Funds (Received in 2004)	(1,383,000) Note 1
<u>2004 Restructuring Commitment (Received 2006)</u>	<u>(5,000,000)</u>
Balance Remaining on August 4, 2006	\$ 20,000,000
<u>Amount Received in August 2006</u>	<u>(4,000,000) Note 2</u>
Balance Due on Opening Day (this financing)	\$ 16,000,000
 Private Contribution to Endowment	 \$ 21,000,000 Note 3

Note 1: Actual payment was \$461,310; however, \$921,690 was offset by additional grants received by the Project. This was a contract condition which allowed the PACT to offset additional government funds or grants against the obligation.

Note 2: Actual payment was \$3,500,000; however, \$500,000 was offset by additional grants received by the Project. This was a contract condition which allowed the PACT to offset additional government funds or grants against the obligation.

Note 3: As to the funding of the Endowment, the Foundation has not met its target of \$10.75 million (adjusted from \$15.75 million in Amendment #4 of the Cooperation Agreement in order to fund PACT operations prior to opening), which was supposed to be funded at the completion of construction (October 2006). The remaining \$5.25 million is due one year after the completion of construction (October 2007). Currently, the amount of funds conveyed to the PACT for the Endowment Funds stands at approximately \$3.5 million. The Foundation continues its fundraising efforts to meet its obligations to fund the Endowment Trust which is to be used to offset the operating costs of PAC.

  
Cynthia W. Curry  
Senior Advisor to the County Manager

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